

Wilmer, Texas

**MOTOR CARRIER GROUP CHAIRMAN'S
FACTUAL REPORT**

(28 Pages)



NTSB

National Transportation Safety Board

490 L'Enfant Plaza, SW
Washington, DC 20594-0001
www.nts.gov

MOTOR CARRIER GROUP CHAIRMAN'S FACTUAL REPORT

A. ACCIDENT

Type: Motorcoach Fire
Date and Time: September 23, 2005 about 6:07 a.m. Central Time
Location: Northbound Interstate Highway 45, .2 miles south of Mars Rd.,
Near Wilmer, Dallas County, Texas
Vehicle #1: 1998 MCI 54-passenger Motorcoach
Motor Carrier #1: Global Limo
Fatalities: 23
Injuries: 14

NTSB #: HWY-05-MH-035

B. MOTOR CARRIER GROUP

Parties to the investigation:

Peter Kotowski,
National Transportation Safety Board
2001 Route 46, Suite 504

Senior Investigator
Office of Highway Safety
Parsippany, NJ 07054

Group/Party Chairman
kotowsp@nts.gov
(973) 334-6709
(202) 285-8240

Duane Baker
Federal Motor Carrier Safety Admin
1301 E. Debbie Lane, Suite 102, #165

Safety Investigator
Texas Division
Mansfield, TX 76063

Party Member
duane.baker@fmcsa.dot.gov
(817) 453-9621
(817) 905-5054 (cell)

C. ACCIDENT SUMMARY

On September 23, 2005 at about 6:07 a.m. CDT, a 1998 MCI 54-passenger motorcoach was traveling northbound on Interstate Highway 45 (I-45) with 44 passengers and the driver, evacuating in anticipation of Hurricane Rita. The passengers were from an assisted living facility in Bellaire, Texas, and most needed to be carried or assisted onto the motorcoach by firefighters. The trip began about 2:30 p.m. on September 22, 2005. The motorcoach had been traveling over 13 hours in heavy traffic when the right rear (#3 axle) tire went flat and needed to

be changed near the FM 1126 overpass in Rice, Texas. The tire left approximately 6,800 ft. of tire marks before the motorcoach came to a stop. A service mechanic was summoned to assist and he changed the tire. The motorcoach continued north on I-45 for about 26 miles.

At approximately 6:00 a.m. a motorist noticed the right rear (#3 axle) hub was glowing red/white hot. He was able to stop the motorcoach in the left traffic lane and told the driver (who did not speak English) of the danger. The motorcoach driver proceeded to pull the vehicle to the right shoulder, where he exited along with a nursing staff-passenger (the trip coordinator) and two other nurse-passengers and saw flames coming from the right rear wheel well. The passengers, with help from the nursing staff on-board and other motorist, began to disembark. At 6:07 the first call was made to 911. Fourteen intact oxygen cylinders were recovered from the motorcoach along with parts to possibly 4 others. One of those cylinders shows evidence of failure. Six nursing staff-passengers on the vehicle, a parent of one of the nursing staff, and 14 patient-passengers were able to exit the burning vehicle. Twenty-three patient-passengers, many of those who needed assistance in walking or needed to be carried off the vehicle were unable to escape.

D. DETAILS

This investigative report addresses:

1. The overall operation and driver oversight of Global Limo, Inc,
2. State and Federal compliance review process and safety ratings,
3. The driver qualifications of the motorcoach driver,
4. Driver qualification requiring proficiency with the English language,
5. Provisions and applicability of exemptions to the Federal Motor Carrier Safety Regulations during a declared emergency, and
6. State and Federal oversight of motorcoach charter service, tour guides and broker services.

1. Global Limo, Inc

1.1 GENERAL INFORMATION

Global Limo, Inc (Global) was registered with the Federal Motor Carrier Safety Administration (FMCSA) as an interstate passenger carrier and was assigned USDOT Identification Number 1031282. Global filed a biennial updated registration¹ on or about July 31, 2005 with the FMCSA. Global was registered at that time with six motorcoaches and 10 interstate drivers². Global is required to update the registration every two years.

According to the owner, Global began operations about 25 years ago, sometime in 1980. According to the FMCSA Licensing and Insurance History, Global made a name change on November 20, 2003. Prior to that date Global was known as Global Tours and

¹ FMCSA Form MCS-150, referred to as a 150 form.

² See Attachment #1: FMCSA, 150 Form

Charters³. Global was incorporated in the State of Texas with two corporate officers. According to the FMCSA, Safety Fitness Electronic Records⁴ (SAFER) Global was granted interstate operating authority by the FMCSA on June 30, 1987.

At the time of the accident Global operated with four motorcoaches, and six drivers⁵.

1.2 INSPECTION HISTORY

During the time span of September 23, 2003 to September 23, 2005 Global's drivers were subjected to eight roadside inspections⁶ that resulted in four drivers being placed out of service, for an out-of-service rate of 50 percent as compared to the national average of 6.78 percent. The four drivers were cited for five out-of-service violations. The out-of-service violations were determined to be:

- Record of duty status⁷ not retained for previous 7 days
- Record of duty status not current
- Record of duty status not retained for previous 7 days
- No record of duty status
- Violation of CDL restrictions

In addition to the out of service violations, other driver violations included:

- Non use of seat belt
- Duty status not current
- Non- English speaking driver
- Required information not shown on v, Total hours

During the same time period four Global vehicles were subjected to roadside vehicle inspections. There were no vehicles placed out-of-service resulting in an out-of-service rate of 0 percent. The national vehicle out-of-service average was 22.92 percent. However, there were vehicle defects discovered during the inspections that included:

- Inoperable tail lamp
- No required vehicle marking
- No fire extinguisher
- Insufficient tire tread depth on steer axle
- Inoperable marker lamp
- Defective brake warning device
- Operating a commercial motor vehicle without a periodic inspection
- Damaged windshield

³ See Attachment #2: Licensing and Insurance Form

⁴ SAFER is an internet website that provides motor carrier safety data to the public. www.safesys.org

⁵ See Attachment #3: SAFER Report 9/23/05

⁶ See Attachment #4: Global Roadside Inspections

⁷ A record of duty status (RODS) is commonly recognized as a log or a drivers log.

The owner said that he does not return the inspection reports to the issuing agency certifying that the indicated discrepancies have been repaired or corrected⁸.

1.2.1 Inspection Selection System (ISS-2)

The Inspection Selection System (ISS-2) is a program designed to aid roadside inspectors in selecting vehicles for inspection. The ISS-2 inspection value based on “safety” is derived from a carrier’s roadside inspection, and accident history. If the inspection value is based on “insufficient data” the carrier has little or no safety performance data available. Vehicles operated by a carrier with an inspection value of 75 to 100 (Maximum value) should be inspected. Carriers with an inspection value of 50 to 74 would be an optional inspection, and carriers with an inspection value less than 50 should not be considered for an inspection under normal circumstances. At the time of the accident Global’s ISS-2 inspection value was 92 based on safety data⁹ that should cause an inspector to conduct an inspection of Global’s vehicles¹⁰.

1.3 MOTOR CARRIER SAFETY STATUS MEASUREMENT SYSTEM (SafeStat)

The Motor Carrier Safety Status Measurement System (SafeStat) is a data analysis program developed by US Department of Transportation’s Volpe National Systems Center. SafeStat uses roadside inspections, accident data, and enforcement action for all carriers to develop a safety fitness assessment. This data is combined with the compliance review when available. The system was designed to provide a safety fitness assessment of all carriers even if they have not been subjected to a compliance review and issued a safety rating. Prior to the development of SafeStat, only carriers that received a compliance review were evaluated and issued a safety rating.

SafeStat is currently used to identify and prioritize carriers for FMCSA and State safety improvement and enforcement programs such as compliance reviews, vehicle inspections and driver inspections (ISS-2). Carriers are categorized A through H, with A as the lowest safety fitness assessment and H as the highest safety assessment. Although SafeStat information is available to the public, the SafeStat category and accident SEA value are not provided. The FMCSA utilizes the SafeStat information to evaluate motor carriers for compliance review selection¹¹.

Global was categorized as an “E” carrier. This category identifies a carrier that has a Driver SEA Value of 75 or greater and all other SEA values are less than 75. Global had a Driver SEA Value of 96.96.

⁸ Title 49 Code of Federal Regulations (49 CFR) Part 396.9(d)

⁹ The high driver out of service rate contributed to this value.

¹⁰ See Attachment #5: Global ISS-2 Report

¹¹ See Attachment #6: Global Carrier Profile

1.3.1 SafeStat Methodology

The SafeStat program analyzes four specific areas identified as Safety Evaluation Areas (SEAs).

- Accident SEA
- Driver SEA
- Vehicle SEA
- Safety Management SEA

The data utilized to calculate a SEA Value is obtained from:

- State Reported Commercial Vehicle Crash Data: Information obtained from recordable accidents¹² investigated by state and local police agencies. Each state has a commercial vehicle supplement report¹³ that records specific commercial vehicle information as prescribed by the National Governors Association (NGA)
- Compliance Reviews: Analysis utilizing the number of acute¹⁴ and critical¹⁵ violations, and reported accidents determined by an on-scene compliance review. The reported accidents from the review are used to determine the Recordable Accident Indicator in the Accident SEA.
- Closed Enforcement Cases: Enforcement cases that resulted in fines, sanctions, or other penalties on major violations of the FMCSR or
- Hazardous Materials Regulations (HMR). These types of violation are often discovered during the compliance review process.
- Roadside Inspections: Results of roadside inspection conducted by Motor Carrier Safety Assistance Program (MCSAP) inspectors. The data utilized is limited to Out of Service (OOS) Violations; violation of OOS orders and serious moving violations.
- Motor Carrier Census Data: Carrier information, size, number of vehicles, number of drivers, and cargo obtained from Carrier Registration Form 150 on file, and updates that are on file.
- The SafeStat calculations are based on the carrier's previous 30-month interstate and intrastate inspections, accidents, and enforcement cases.

¹² A "recordable accident" is defined in 49 CFR Part 384, Appendix A *The Accident Factor*

¹³ See Attachment #7: Commercial Vehicle Supplement Report

¹⁴ An acute violation is a violation that so severe it must be corrected. One acute violation affects the carrier's safety rating

¹⁵ A critical violation is a violation that indicates a breakdown in safety management controls. To affect a carrier's safety rating there must be a pattern of violation, consisting of 10% or more violations of records checked.

A SafeStat Score is only issued to carriers with a poor safety ranking, defined as carriers with two or more SEA values in excess of 75. These carriers represent approximately the worst 25 percent of assessed carriers within that particular SEA according to the FMCSA and are categorized as an A, B, or C carrier.

Carriers that are deficient in one SEA (a SEA Value of 75 to 100) do not receive a SafeStat Score. These are carriers that have the potential to develop an overall poor safety ranking. They are categorized as a D, E, F, or G carrier. Category H is a carrier that has a SEA Value in each category below 75.

A complete description of the SEA calculation process, report information, references, and program evaluation are available in the publication *SafeStat Motor Carrier Safety Status Measurement System, Methodology: Version 8.4*. This publication and is available at the Volpe web site: <http://ai.volpe.dot.gov/SafeStat/safestat.asp?file=method.pdf>.

1.4 COMPLIANCE REVIEWS & SAFETY RATING

The FMCSA utilizes the compliance review to measure a motor carrier's safety management controls to ensure compliance with the safety fitness standard¹⁶. Information gathered from the compliance review is converted to a safety rating for the carrier¹⁷. The safety rating is issued by the FMCSA considering the factors described in Title 49 Code of Federal Regulations (49 CFR) Part 385.7 and computed using the *Safety Fitness Rating Methodology* (SFRM) described in 49 CFR, Appendix B to Part 385

- “Satisfactory” safety rating is issued when the motor carrier has adequate safety management controls in place to comply with the safety fitness standard.
- “Conditional” rating is issued when the motor carrier does not have sufficient safety management controls in place to ensure compliance with the safety fitness standard. A “Conditional” motor carrier has the potential to be in non-compliance with the safety fitness standard.
- “Unsatisfactory” rating is issued when the motor carrier does not have sufficient safety management controls in place to ensure compliance with the safety fitness standard. The “Unsatisfactory” motor carrier has displayed substantial non-compliance with the safety fitness standard. Unless the motor carrier demonstrates to the FMCSA that they have improved their safety management controls the motor carrier is placed out of service. A motor carrier transporting hazardous materials or passengers is given 45 days to comply and a property-carrying carrier is given 60 days to comply.

¹⁶ 49 CFR Part 385.5

¹⁷ 49 CFR, Appendix B to Part 385

1.4.1 Texas DPS Educational Review

The Texas Department of Public Safety (DPS) conducted an intrastate “Educational Review” of Global on April 10, 2002. The educational review is similar to the compliance review process utilized by the FMCSA. There was no safety rating assigned or enforcement action taken. At the time of this review the State of Texas did not issue safety ratings to an intrastate carrier¹⁸. The review determined that Global was deficient in the following areas¹⁹:

- Part 382, Drug & Alcohol Program
 - No drug/alcohol testing program
- Part 391, Driver Qualification Files
 - No driver background investigation
 - No driver employment application
 - No driver record inquiry
- Part 395, Hours of Service
 - Failure to require driver to make a record of duty status²⁰ (log)
 - Failure to require form and manner on driver log
- Part 396, Vehicle
 - Failure to maintain vehicle inspection and maintenance records
 - Failure to maintain evidence of brake inspectors qualifications

The FMCSA is the only agency that can issue an interstate carrier a safety rating. The FMCSA can rely on the State compliance review and issue a safety rating, but did not do so in this review.

The educational review resulted in five specific recommendations for compliance in the driver qualification area, driver logs and vehicle maintenance. Global was also directed to notify the Texas DPS of their actions to comply with the Federal Motor Carrier Safety Regulations. The narrative section of the review included additional comments describing the overall discrepancies in each area. The reviewing officer recommended compliance monitoring and a follow-up compliance review by the Texas DPS however; no follow-up review was made, until the FMCSA compliance review in February 2004.

¹⁸ Effective in early 2004 the Texas DPS began issuing safety ratings to intrastate carriers. The procedure used to determine the safety rating mirrors the FMCSA compliance review process. The State of Texas also issues out of service orders to carriers that are rated unsatisfactory. The shut down orders are issued after 60 days for passenger carriers and hazmat carriers and 75 days for property carriers.

¹⁹ See Attachment #8: Texas DPS Educational Review

²⁰ 49 CFR Part 395.8 identifies the driver’s Record of Duty Status (RODS). The motor carrier industry and public commonly use the word “log” in lieu of the term Record of Duty Status or RODS. The term log is used in this report because of its common usage and familiarity to the public and the motor carrier industry.

1.4.2 FMCSA Pre-Fire Compliance Review & Safety Rating

Global was rated “Satisfactory” on February 12, 2004 as a result of a compliance review²¹ that was conducted by the FMCSA on February 6, 2004. The compliance review was conducted because Global was identified as a SafeStat Category “B” carrier. Deficiencies were noted in the following areas:

- Part 382, Drug & Alcohol Program
 - Failing to provide drivers with drug/alcohol policies
 - Failure to have persons trained for reasonable suspicion
- Part 391, Driver Qualification Files
 - Failing to maintain a copy of response from each State agency
 - Failing to maintain a note relating to the drivers annual record check
 - Failing to maintain a driver’s medical examiner certificate
- Part 395, Hours of Service
 - False logs
- Part 396, Vehicle
 - Failure to have a schedule for vehicle inspection and maintenance

1.4.3 FMCSA Post-Fire Compliance Review & Safety Rating

As a result of this investigation the FMCSA conducted another compliance review²² of Global’s operation. The compliance review resulted in an “Unsatisfactory” safety rating issued on October 7, 2005. Deficiencies were noted in the following areas:

- Part 382, Drug & Alcohol Program
 - No drug/alcohol testing program
- Part 391, Driver Qualification Files
 - No driver background investigation
 - Failure to maintain a Driver Qualification File
 - No driver record inquiry
- Part 395, Hours of Service
 - Failure to require driver to make a record of duty status (log)
 - Failure to require form and manner on driver log
- Part 396, Vehicle
 - Failure to maintain vehicle inspection and maintenance records
 - Failure to maintain evidence of brake inspector qualifications

Typically when a passenger carrier or hazardous materials carrier receives an “Unsatisfactory” safety rating, they are given 45 days to come into compliance

²¹ See Attachment #9: Pre-Fire Compliance Review

²² See Attachment #10: Post Fire Compliance Review

with the Federal Motor Carrier Safety Regulations.²³ In this compliance review the FMCSA declared that Global's operations created an "imminent hazard" to public safety and an "Operations Out-Of-Service Order"²⁴ was issued on October 7, 2005. The FMCSA determined that the violations detected individually and cumulatively were likely to result in serious injury or death to Global's drivers and the motoring public. The order was based on:

- Global's vehicles were determined to be mechanically unsafe,
- Lack of vehicle maintenance, inspection and repairs,
- Failure to comply with the required drug and alcohol testing regulations,
- Failure to comply with driver qualification requirements,
- Failure to comply with driver hours of service requirements

The same discrepancies described in the Texas DPS educational review and the pre-fire event compliance review were found in the post-fire compliance review that led to the "Operations-Out-Of-Service Order."

The FMCSA, as part of the post-fire compliance review, inspected the remaining four motorcoaches in Global's fleet. Two of the motorcoaches were placed out of service. One motorcoach was placed out of service for an audible air leak and a brake out of adjustment, and one brake that was inoperable. Another motorcoach was placed out of service because one tire had a tread depth of less than 1/32 of an inch. Of the other two motorcoaches one had missing emergency door and emergency window markings, and an audible air leak (motorcoach was able to maintain air pressure). The other motorcoach had defective wipers, a sheared wheel lug, an audible air leak, a defective exhaust system, an engine structure support cracked or corroded, and one brake out of adjustment. The vehicle inspection segment of the compliance review resulted in a 50 percent out of service rate.

2. FMCSA Compliance Review and Safety Rating Procedures

The FMCSA utilizes a computer program *Compliance Analysis and Performance Review Information System* (CAPRI) during the compliance review. The CAPRI program is used to organize, record, and determine a proposed safety rating. The actual safety rating is determined and issued by the FMCSA Headquarters in Washington, DC.

The compliance review is conducted according to guidance provided in the FMCSA Field Operations Training Manual (FOTM) Volume II to ensure consistency, uniformity and efficiency in conducting compliance reviews. The FOTM is distributed and updated periodically each year by a FMCSA committee referred to as the FOTM Team.

²³ At the end of the 45-day period if the company has not improved in the areas that lead to the "Unsatisfactory" rating, the FMCSA has the authority to issue a "shut down" order, revoking the company's operating authority.

²⁴ See Attachment #11: Operations Out-Of-Service Order

The FOTM provides the FMCSA investigator with guidance for conducting a compliance review as well as establishing the minimum number of driver records, driver logs and vehicle maintenance records to be examined. The minimum number of vehicle inspections to consider is also specified, based on the number of power units under control of the carrier.

Factor ratings are determined by considering five regulatory factors, and the recordable accident rate factor. The Vehicle Factor 4 also includes the vehicle out of service rate. The factors considered are described in Table 1.

FACTOR	DESCRIPTION	Applicable FMCSR Part
Factor 1	General	387 and 390
Factor 2	Driver	382, 383, and 391
Factor 3	Operational	392 and 395
Factor 4	Vehicle	393 and 396
Factor 5	Hazardous Materials	397, 171, 177, 180
Factor 6	Accident	Recordable Accident Rate

Table 1

2.1 SAFETY RATING

The CAPRI program determines the proposed safety rating from the information developed in the compliance review. During the compliance review each factor is to be examined. Noncompliance with an “acute” regulation or a “critical” regulation results in an assessment of one point for that factor. Two points is assessed for noncompliance with a critical factor relating to Factor 3, Part 395 hours of service.

The vehicle out-of-service rate and recordable accident rate are also considered in the compliance review. The driver out-of-service rate is not considered in the compliance review.

2.1.1 Vehicle Factor

The number of vehicle inspections²⁵ utilized to calculate the out of service rate is based on the number of vehicles in a carrier’s fleet. The number of

²⁵ Level 1 - a complete inspection consisting of the driver and vehicle criteria, Level 2 - a walk-around inspection consisting of the driver and vehicle criteria but does not include an under the vehicle examination, Level 3 - a driver-only criteria inspection, Level 4 – an inspection for a special study, Level 5 - a vehicle-only criteria inspection, Level 6 – enhanced inspection for radioactive shipments

inspections considered is equivalent to the number of maintenance files that are to be reviewed. Only inspection Levels 1,2, and 5, and the most recent (chronological) inspections within the previous 12 months are used for the out of service calculation. The FOTM limits the inspection criteria to vehicles engaged in interstate commerce at the time of the inspection. If a carrier's vehicle out of service rate exceeds 34 percent, the carrier will be rated "Unsatisfactory" in the vehicle factor. If the out of service rate is less than 34 percent the carrier will receive a "Satisfactory" factor rating. There are no provisions for a "Conditional" factor rating in this category.

2.1.2 Accident Factor

The data required to calculate a carrier's accident rate consists of the recordable accidents within the 12-month period prior to the compliance review and the carrier's fleet mileage. Title 49 CFR, Part 390.5²⁶ defines an accident as an occurrence involving a commercial vehicle on a highway in interstate or intrastate commerce that results in a fatality, bodily injury or disabling damage... The FOTM limits using recordable accidents engaged in interstate commerce only. Fleet mileage considered must be only interstate traveled miles. The accident factor will be used only when a motor carrier incurs two or more recordable accidents within 12 months of the CR.

The accident rate is calculated by multiplying the number of interstate reportable accidents by 1 million and dividing by the total fleet interstate miles.

The rates used for the compliance review are about double the national average accident rate calculated from compliance reviews conducted in Fiscal Years 1994, 1995, and 1996. The accident rates were determined to be .747 per million miles for all carriers and .839 per million miles for carriers operating entirely within a 100-mile radius.

- If a carrier's accident rate exceeds 1.5 accidents per million miles for operations that exceed a 100-mile radius, or
- Exceed 1.7 accidents per million miles traveled in less than a 100-mile radius an "unsatisfactory" factor rating is assessed. If a carrier's accident rate is below these limits, then a "Satisfactory" factor rating is assessed. There are no provisions for a "Conditional" rating in this factor.

²⁶ Effective September 27, 1995, Final Rule 49 CFR Part 390, 60 FR 44439, August 28, 1995. The SUMMARY of this rulemaking amends the definition to include the intent of the Federal Highway Administration to require interstate carriers to include their accidents involving a commercial motor vehicle in intrastate commerce on accident registers. The SUPPLEMENTARY INFORMATION section of this rulemaking reads: There is a long precedent of interstate motor carriers being required to file and/or maintain reports about accidents... in interstate, foreign, or intrastate commerce. This amended definition assists the Federal Highway Administration in evaluating a motor carrier's accidents and countermeasures to reduce future accidents. This technical amendment clarifies the Federal Highway Administration's intent regarding this issue.

The accident rating will only be considered if the motor carrier experiences two or more recordable accidents in the preceding 12 months. If a carrier contests an accident rating the FMCSA will consider preventability as an alternative to the recordable accident rate²⁷.

2.1.3 FMCSA Intrastate Operation Policy

On October 2, 1991 The Federal Highway Administration (FHWA) Office of Motor Carrier²⁸ (OMC) issued a policy memorandum²⁹ “Collection of Intrastate Noncompliance Information during Safety Compliance Reviews” directing their agents to include both intrastate and interstate data in the compliance review. On April 19, 2002 the FMCSA issued a memorandum³⁰ limiting the use of interstate data for the compliance review only.

On August 1, 2002 the Commercial Vehicle Safety Alliance (CVSA) issued a letter of concern to the FMCSA asking that all data both intrastate and interstate data be used in the compliance review³¹. The FMCSA responded that they would not reconsider their position, noting that both intrastate and interstate data was being used in the SafeStat program³².

2.2 RATING COMPUTATION

The CAPRI computer program determines the proposed safety rating. The rating is based on the Motor Carrier Safety Rating Table³³ using the points assessed to each rated factor in the compliance review.

Factors rated and the assessed point values are:

- Satisfactory if the acute and/or critical = 0 points
- Conditional if the acute and/or critical = 1 point
- Unsatisfactory if the acute and/or critical = 2 or more points

The overall safety rating is based on the Motor Carrier Safety Rating Table.

FACTOR RATINGS		OVERALL SAFETY RATING
UNSATISFACTORY	CONDITIONAL	
0	2 or fewer	Satisfactory
0	more than 2	Conditional
1	2 or fewer	Conditional
1	more than 2	Unsatisfactory
2	0 or more	Unsatisfactory

Table 2

²⁷ Topic addressed in 49 CFR Appendix B to Part 385, B. *Vehicle Factor*

²⁸ Now known as the FMCSA

²⁹ See Attachment #12: FHWA/OMC Intrastate Violation Policy 10/02/1999

³⁰ See Attachment #13: FMCSA Exclusion of Intrastate Violations 04/19/2002

³¹ See Attachment #14: CVSA Letter to FMCSA 08/01/2002

³² See Attachment #15: FMCSA Response to CVSA 09/03/2002

2.3 COMPLIANCE REVIEW STATISTICS

The Motor Carrier Management Information System (MCMIS) is a database of motor carrier census, inspections, accidents and enforcement history maintained by the FMCSA. In calendar Year 2004 there were 822,171-registered motor carriers of which 9,970 were motorcoach carriers. In calendar year 2005 there were a total of 910,866 motor carriers registered of which there were 10,796 motorcoach carriers³⁴.

As of December 31, 2005 there were a total of 122,358 rated³⁵ motor carriers of which there were 2,973 rated motor coach carriers³⁶. In calendar year 2005 there were a total of 12,734 compliance reviews conducted of which 467 were passenger carriers³⁷.

Compliance review historical data for 2000 through 2004 is available through the John Volpe National Transportation System Center on behalf of the FMCSA³⁸. The reports provide information of the number of “Satisfactory”, “Conditional”, “Unsatisfactory”, and unrated compliance reviews. For the year 2004 there were 7,623 compliance reviews conducted.

Safety Ratings 2004	Compliance Reviews	
	Number	Percent
Satisfactory	4,396	57.67%
Conditional	2,308	30.28%
Unsatisfactory	698	9.16%
Not Rated	221	2.90%
TOTAL	7,623	100%

Table 3

The compliance reviews in 2004 resulted in 1,583 Acute violations, 7,898 Critical violations, and 51,243 Other non-rated violations.

The most recurrent Acute violations in 2004 were:

- Failing to implement an Alcohol/Drug testing program
- Failing to randomly test for drugs/alcohol
- Using a driver who has tested positive for a drug

The most recurrent Critical violations in 2004 were:

- Failing to require driver vehicle inspection report
- Using a driver before receiving a negative pre-employment drug test
- Failing to preserve supporting documents for six months

³³ Identified by 49 CFR Appendix B to Part 385

³⁴ Motor Carrier Management Information System (MCMIS)

³⁵ Motor carriers that have received a compliance review and a safety rating.

³⁶ MCMIS

³⁷ MCMIS

³⁸ See Attachment#16: Volpe Compliance Review Reports

3. Driver Information

3.1 GENERAL INFORMATION

The driver held a Mexican driver's license³⁹ equivalent to the American CDL Class "B" and was endorsed for passenger transportation. The license was issued on September 2, 1998 with an expiration date of September 2, 2006. The Mexican CDL is issued for a period of 10 years. Every two years the driver is required to renew the license and provide a valid medical certificate. The plastic license packet is embossed over the appropriate expiration year as a method to certify that the license is valid. An examination of the accident driver's CDL indicated an embossed 04 indicating that the CDL was valid through September 2, 2006. The accident driver was issued his first Mexican driver's license that was equivalent to a USA CDL Class "B" passenger endorsement on September 2, 1988.

3.2 MEDICAL CERTIFICATION

The Mexican CDL does not require a separate medical certification. The valid Mexican CDL is equivalent to a United States CDL and valid medical certificate. The back of the Mexican CDL contains information in a yes or no response to diabetes, hypertension and corrective lenses. The accident driver's CDL indicated "No" for corrective lenses, diabetes, and hypertension.

In an interview⁴⁰ with Safety Board investigators through a Texas DPS interpreter⁴¹, the accident driver indicated that he suffers from diabetes that is treated by oral medication. He was examined, and is under the care of a doctor in Mexico. His wife, periodically brings him his diabetes medication from Mexico. He does not have the prescription filled in the United States.

On March 7, 2005 Global referred the driver to an American physician for a DOT Physical. The examining physician refused to issue a medical certificate to the accident driver because a physician in Mexico diagnosed the accident driver with Type 2 diabetes in 1998. The driver's last follow-up was six months prior to the date of examination. The examining physician indicated on the medical examination form, that the accident driver "needs to show proof of diabetic control" before he would certify the driver fit for duty. He issued the accident driver a prescription for medical tests associated with the diagnosed conditions. The driver failed to report for those tests.

The driver stated that he had a portfolio in the bus to the right of the driver's seat that contained his logbook and personal papers. The portfolio was located but was damaged by fire. The interior of the portfolio protected some of the documents from the

³⁹ See Attachment #17: Driver License Information

⁴⁰ The complete driver's interview is contained in the Human Performance Group Chairman's Report

⁴¹ The accident driver did not speak English

fire. Located in the portfolio were documents from the Mexican Secretary of Transportation indicating his medical diagnoses of Diabetes.

3.3 DRIVER QUALIFICATION FILE

The driver's qualification file was obtained from Global⁴². The file contained:

- Driver Qualification Application
- Annual Review of Driving Record⁴³ (incomplete)
- Request information from previous employer (incomplete)
- Motor Vehicle Driver's Certification of Violation (blank)
- Hours of Service for First Time or Intermittent Drivers (incomplete)
- Off-Duty Certification for Meals and Routine Stops (no date)
- Release of Information Form (incomplete)
- Road Test Examination (blank)
- State Driver Record inquiry (blank)
- Vehicle inspection form March 1, 2005
- Semi-Monthly Time Sheet, February, March, April

3.4 HOURS OF SERVICE

The driver's hours of service for the day of the fire and cumulative total leading up to the day of the fire are unknown. The driver advised that he operated the motorcoach in the Louisiana evacuations from September 4 through September 17, 2005. The driver was not required to maintain a logbook for this period of time because he was operating in association with a declared emergency in Louisiana due to Hurricane Katrina. The driver was still required to maintain his hours of service and report them to his company at the duration of his activity during the exemption. This notice of hours worked is designed to prevent the driver from exceeding the 70-hour rule⁴⁴. There was no such record found in the driver's portfolio, or at Global.

On Monday September 19, 2005 the driver began a round trip from McAllen, Texas to Dallas, Texas for the Dallas Cowboys football game. He returned to McAllen after the game. According to PCMiller⁴⁵ the trip to Dallas was about 551 miles and would take about 8 hours and 42 minutes to complete. The driver stayed overnight in the Dallas area and began the return trip in the morning September 20, 2005.

⁴² See Attachment #18: Driver Qualification File

⁴³ According to the FMCSA Office in McAllen, TX Mexico does not have an operational driver record retention or retrieval system.

⁴⁴ 49 CFR Part 395.5(b)(2)

⁴⁵ PCMiller is a computer mapping program utilized by the FMCSA to calculate distance and driving time using an average speed of 65mph

The driver was off duty from the completion of the Dallas trip until he began the accident trip September 22, 2005 at about 2:30 p.m.

According to the accident driver, his current logbook was in a portfolio on the right side of the driver's seat. The portfolio was recovered and examined by a Safety Board investigator and a Lieutenant from the Dallas County Sheriff's Office. Located within the portfolio was a logbook for the accident driver for the month of August 2005. The logbook was partially legible, due to heat damage. The logbook contained the original logs that were removable⁴⁶ and the duplicates that remained bound. The original logs were intact. The investigators did not find a logbook for the month of September.

A partially burned piece of paper was located in the driver's portfolio that indicated locations in Louisiana⁴⁷. There were no specific times indicated but the entries were indicative of the driver's activity for the month of September.

According to the driver's log, on July 29, 2005, he made a trip from Washington, DC to a stop in New York City, New York, and then continued on to Burlington, Vermont. The driver logged a total driving time of 9 hours and 30 minutes. According to PCMiller the driving time should have been about 10 hours 40 minutes. The driver made a return trip on July 30, 2005 logging 8 hours driving time⁴⁸.

On August 3, 2005 the driver logged a trip from Fredericksburg, VA to a stop in Charlotte, NC, and then continuing to Montgomery, AL. The driver logged 11 hours and 30 minutes driving time⁴⁹. The maximum driving hours permitted for passenger carriers is 10 hours⁵⁰.

On August 4, 2005 the driver logged a trip from Montgomery, AL to a stop in Baton Rouge, LA, with a final destination of Corpus Christi, Texas. The driver logged 12 hours driving time⁵¹. According to PCMiller the trip was estimated to take about 13 hours and 52 minutes.

Global was in possession of copies, of the driver logs through August 15, 2005. There was no indication that Global conducted a review of the driver logs, or took action against the driver for violating the hours of service regulations.

⁴⁶ FMCSR 395.8(i)

⁴⁷ See Attachment #19: Louisiana Activity

⁴⁸ See Attachment #20: Driver Logs & Trip Information 7/29-30/2005

⁴⁹ See Attachment #21: Driver Log and Trip Information 8/3/2005

⁵⁰ 49 CFR Part 395.5 (a)(1)

⁵¹ See Attachment #22: Driver Log 8/4/2005

3.4.1 Driver Enforcement History & Hours of Service Violations

On February 12, 2005 the driver was stopped for a roadside inspection in Harris County, Texas. The driver was issued an inspection notice with the following violations:

- Non-English speaking driver
- No fire extinguisher

On March 1, 2005 the driver was stopped for a roadside inspection in Cameron County, Texas. The driver was placed out of service for 8 hours for not retaining the previous 7-days record of duty status⁵². In addition, the following violations were also discovered⁵³:

- Log form and manner
- Duty status not current
- Left front tire less than 4/32 of an inch
- Defective rear ID lamp

On August 19, 2005, the driver was stopped for a roadside inspection in Webb County, Texas. The inspection took about 30 minutes. At 8:31 p.m. the driver was placed out of service for 8 hours for not retaining the previous 7-days record of duty status. According to the driver's logs he did not indicate that he was stopped at a roadside inspection. His log for August 19, 2005 indicates that he was driving at the time the inspection took place. The inspection took about 30 minutes. According to the driver's log he went off duty at 9:00 p.m. (location on log in legible) At 2:00 a.m. on August 20, 2005 the driver logged driving, less than eight hours after being placed out of service. The driver drove for 3.5 hours on August 20 in violation of the out of service order⁵⁴. In addition the following violations were also discovered⁵⁵:

- Speeding
- Duty status not current

4. English Language Considerations

4.1 DRIVER ENGLISH LANGUAGE LIMITATIONS

Prior to the accident, the accident driver was stopped by a motorist and advised that the right rear axle of the motorcoach was glowing red. It was unknown if the driver comprehended the motorists' concerns, even though he eventually pulled over to the

⁵² North American Standard Driver Out-of-Service Criteria, Drivers Record of Duty Status — US/Mexico Section (b)(5) b. Passenger-Carrying Vehicles (395.5)

⁵³ Different bus than the February 12, 2005 inspection

⁵⁴ See Attachment #23: Driver Logs 8/19/2005 – 8/20/2005

⁵⁵ Different bus than the February 12, 2005, and March 1, 2005 inspections

shoulder of the road. The driver was unable to communicate with the passengers or give instructions because he did not speak English⁵⁶.

On February 12, 2005 the accident driver was stopped for a roadside inspection on Interstate Highway 10 in Harris County, Texas. The inspector noted on the inspection report that the driver was a non-English speaking driver. The discrepancy was noted on the inspection report, which requires the motor carrier to correct the discrepancy within 15 days⁵⁷.

Safety Board investigators required the use of a Hispanic interpreter to interview the accident driver. The driver was unable to respond to any questions about his license, medical, pre-trip inspection, or anything about the accident in English.

4.2 CODE OF FEDERAL REGULATIONS

Title 49 CFR Part 391(a) requires a driver to be qualified, and “a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.” The provisions of 49 CFR Part 391.11(b) defines the qualifications for commercial vehicle drivers as:

- Be at least 21 years old
- **Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records**
- Can by experience and training can safely operate the vehicle he drives
- Is physically qualified
- Holds a valid CDL
- Is not disqualified
- Has completed a road test

49 CFR Part 383.73 establishes state procedures for the issuance of the Commercial Driver’s License. As part of this requirement the FMCSA issued a further clarification as to the intent of this Part. The interpretations Question #1 to §383.73 *State Procedures* offers guidance as follows:

Question 1: Does the State have any role in certifying compliance with [§391.11\(b\)\(2\)](#) of the [FMCSRs](#), which requires driver competence in the English language?

Guidance: No. The driver must certify that he or she meets the qualifications of [part 391](#). The State is under no duty to verify the certification by giving exams or tests.

⁵⁶ See Human Performance Group Chairman’s Factual Report

⁵⁷ FMCSR 396.9(d)

4.3 2005 NORTH AMERICAN UNIFORM OUT OF SERVICE CRITERIA

On April 1, 2005 the North American Uniform Out-of-Service Criteria⁵⁸, Part 1, Section #6 requires that the driver and motor carrier be able to communicate in the language of the country in which they are operating so that safety is not compromised. If a driver or motor carrier is unable to communicate sufficiently to understand and respond to official inquiries then driver should be placed out of service.

According to several safety agents of the FMCSA, they have been directed by the agency not to enforce this section of the out of service criteria.

The Texas DPS had directed that for interstate drivers, arrests or citations should not be initiated against a driver for violation of the English language requirement as described in 49 CFR Part 391.11(b)(2). Rather a warning be issued and the driver placed out of service. The inspector is then required to notify a supervisor and schedule a compliance review of the motor carrier for compliance with this part⁵⁹.

The State of Texas has not adopted 49 CFR part 391.11(b)(2) for intrastate drivers and therefore no enforcement or out of service issue can be initiated against an intrastate driver for violations of this part.

4.4 RULEMAKING ACTIVITY

4.4.1 English Language Requirement

On August 26, 1997, the US Department of Transportation, Federal Highway Administration⁶⁰ (FHWA) issued an Advanced Notice of Proposed Rulemaking (ANPRM) request for comments concerning English Language Requirement⁶¹. The FHWA was attempting to re-evaluate the requirements for a driver to read, speak and understand the English language sufficiently to understand highway traffic signs and signals and respond to official inquiries.

⁵⁸ This criteria is created by the Commercial Vehicle Safety Alliance (CVSA) and endorsed by the FMCSA for the purpose of identifying violations that render the commercial motor vehicle operator and/or vehicle unqualified to continue in operation over the roadways.

⁵⁹ See Attachment #24: DPS Language Policy

⁶⁰ Now known as the FMCSA

⁶¹ Federal Register / Vol. 62, No 165 / Pages 45200-45201

On July 24, 2003 the FMCSA withdrew the ANPRM requesting comments on potential changes to a provision in the Federal Motor Carrier Safety Regulations (FMCSRs) involving the English language⁶². The FMCSA concluded that at the present time there is no quantifiable data to require a more stringent standard.

4.4.2 Intermodal Transportation

On December 22, 1994 the Federal Highway Administration posted a Final Rule in the Federal Register⁶³ Effective June 27, 1995 concerning the *Intermodal Safe Container Transportation Act of 1992*. Intermodal transportation involves the movement of container freight throughout the world. This act established accurate information about the weight and nature of cargo standards for intermodal transportation and the need for a universal language standard. One of the requirements of this Act was that a certification form be in English.

4.5 AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS (AAMVA) GUIDELINES

The AAMVA Guidelines for Knowledge and Skill Testing recognizes the inability to read or speak the English language is not necessarily a barrier to the operation of a motor vehicle. The guidelines indicate that the state has the responsibility to assure the applicant is able to interpret highway signs, signals, and markings. The need to accommodate the foreign speaking applicant with information, manuals, and testing are prescribed by the guidelines.

4.6 COMMERCIAL VEHICLE SAFETY ALLIANCE (CVSA)

On September 10, 2003 the CVSA filed a petition⁶⁴ with the FMCSA concerning the recession of the ANPRM DOT Docket 97-2759. The CVSA in its petition identified the safety issues to the inspector and highway users during roadside inspections. The proposal by the CVSA was to develop a test standard for English language communication along with an educational package for industry and enforcement personnel. The proposal also recommended acceptance of Articles 906 and 913(5)(a)(i) of NAFTA as proposed by the Land Transportation Standards Subcommittee. The resolution in part requires that the driver and motor carrier be able to communicate in the language of the country in which he/she is operating. In January 2003, the Canadian Council of Motor Transport Administrators adopted a policy resolution of these articles.

⁶² Federal Register / Vol. 68, No 142 / Pages 43889-43891

⁶³ Federal Register December 22, 1994, FHWA Docket No: MC-93-17

⁶⁴ See Attachment #25: CVSA Petition

4.7 ROADSIDE INSPECTIONS

During the investigation of an accident in Slippery Rock, PA, Safety Board investigators received information from about 12 commercial vehicle inspectors from around the United States concerning the safety issues a language barrier presents at the roadside inspection.

A number of the inspectors indicated that safety inspections are compromised if the driver is unable to converse and understand the inspector. This creates a safety hazard to the inspector if he goes under the truck to complete a Level 1 inspection. In the interest of safety, a number of inspectors indicated that they would not conduct a Level I inspection because of the language barrier. The responses included drivers failing to understand simple instructions regarding their movements that resulted in trucks running over scales, not stopping at prescribed inspection locations, and in one incident a Missouri inspector was struck by a commercial motor vehicle because the driver did not understand the instructions given to him in English.

4.8 NTSB INVESTIGATIONS RELATING TO DRIVER LANGUAGE BARRIERS

4.8.1 Accident Driver, Meriden, Connecticut

The Safety Board investigated a motorcoach fire that occurred on Interstate highway 91 near Meriden, Connecticut⁶⁵ on August 16, 2005. The motorcoach was in transit when the fire originated at the rear of the motorcoach. The driver pulled to the shoulder of the road and exited the motorcoach to assess the situation. The driver re-entered the motor coach and attempted to warn the passengers of the danger and tell them to exit the vehicle. However, because the driver spoke Chinese and limited English, the passengers were delayed in exiting the motorcoach due to the lack of communication. The passengers ultimately deciphered what the driver was trying to express and exited the motorcoach. There were no injuries

4.8.2 Terminal Operator, Davie, Florida

During the investigation of a tanker rollover fire in Davie, Florida⁶⁶ that occurred on February 11, 2005, Safety Board investigators interviewed the terminal manager of a petroleum supplier. The terminal manager advised that as part of their operation they train and certify drivers for proficiency to use the loading racks. Because Spanish is the predominant language they use a “train the trainer” type program. One person who speaks English and Spanish from a trucking company will train their drivers. After completing the training they will

⁶⁵ Ref Accident Number HWY-06-FH-002

⁶⁶ Ref Accident Number HWY-05-MH-018

physically demonstrate the skills learned without a verbal explanation of the procedures. The terminal manager asked a trainer; how do they drive because the message signs are in English? He was told that the drivers just follow the traffic. The terminal manager was unable to communicate with a number of the drivers that use their facility.

This accident resulted in four fatalities, and one serious injury.

4.8.3 Accident Driver, Slippery Rock, Pennsylvania

The driver of a tractor semi-trailer accident in Slippery Rock, Pennsylvania⁶⁷ that occurred on July 7, 2003 was unable to communicate with first responders because of a language barrier. The driver was unable to advise the first responders that the truck was not carrying hazardous materials, or that another driver did not occupy the tractor. A Safety Board investigator interviewed the driver on November 26, 2005. The driver advised through an interpreter that he could not communicate with the police or fireman. The police just took the papers he had (log book, license) and put him in the back of a police car.

He said he had been stopped for two roadside inspections where he could not communicate with the inspector. He gave the inspector his papers, (log book license, medical card, shipping papers), and called his boss on the cell phone. He gave the cell phone to the inspector and the inspector spoke with his boss telling him what he wanted the driver to do. The inspector then gave the phone to the driver and he received the directions of the inspector from his boss in his native Bosnian language. Any questions or responses were made to his boss and then he handed the cell phone to the inspector. The inspector did make an entry on the inspection report for a non-English speaking violation, but did not issue a citation.

The driver responded that he has encountered variable message signs, but he did not understand them. He just followed the traffic. When asked if he was ever lost or confused, he replied that he would stop and call his boss. He would tell him the information where he exited and his boss would tell him where to go.

The driver responded to the question about his log entries that he would get other drivers to tell him where he was, or they would write it down. He stated that on the day before the accident in Slippery Rock he stopped near Chicago. He could not say whether he was in the city limits, or was to the west or east of Chicago, only that he was in the Chicago area.

This accident resulted in five fatalities.

⁶⁷ Ref Accident Number HWY-03-FH-038

4.8.4 Accident Driver, Manahawkin, New Jersey

The Safety Board investigated an accident where a motorcoach traveled off the roadway and overturned on the Garden State Parkway near Manahawkin, New Jersey⁶⁸. The motorcoach driver spoke Chinese and was unable to answer basic questions about the accident. The New Jersey State Police were able to interview with the aid of a State Police interpreter. The accident resulted in two fatalities and 28 injured passengers.

4.8.5 Accident Driver, Old Bridge, NJ

The Safety Board investigated an accident where a motorcoach lost control and overturned down an embankment on the Garden State Parkway near Old Bridge, NJ⁶⁹. The accident occurred on December 4, 1998. The motorcoach driver was unable to provide basic information about the accident to the investigating officers. The driver made a statement to the New Jersey State Police, and later to Safety Board investigator through a Russian interpreter of the New Jersey State Police. The accident resulted in eight fatalities and 15 injured passengers

5. Trip Information

5.1 ACCIDENT TRIP

On September 21, 2005 an official from Sun Rise Senior Living Center in Bellaire, Texas contacted The Bus Bank (a bus broker) in Chicago, IL for transportation⁷⁰. The accident trip was scheduled to begin at the Sun Rise Senior Living Center in Bellaire, Texas on Thursday September 22, 2005 at 9:45 a.m. The trip was to make stops at the Forum Park Lane in Dallas, Texas on Thursday September 22, 2005 at 2:00 p.m. and at Eden Terrace of Arlington in Arlington, Texas September 22, 2005 at 3:00 p.m. The Bus Bank contacted Global (a Bus Bank registered carrier) to make the run. This trip was not a part of the Texas or FEMA evacuation program. (See Human Performance Group Chairman's Report)

5.1.1 Bus Bank

The Bus Bank is based in Chicago, IL and offers marketing, and charter services for the motorcoach industry. The Bus Bank maintains a registry of motorcoach companies from around the United States. When the Bus Bank arranges a charter in an area, they contact one of the motorcoach companies on their registry, and provide the details of the proposed charter. If the motorcoach

⁶⁸ Ref Accident Number HWY-03-IH-021

⁶⁹ Ref Accident Number HWY-99-MH-007

⁷⁰ See Attachment #26: Trip Itinerary

company agrees, then they are given the itinerary and complete the charter trip. The Bus Bank then pays the motorcoach company for their services.

The Bus Bank registration (a contractual agreement) requires that drivers be properly licensed and uniformed. The motorcoach company must comply with all applicable Federal State, and local laws. The motorcoach company must have the federally required insurance, with the Bus Bank as a named insured. According to the President of the Bus Bank, Global did not have a formal registration or contract; their information was taken over the phone over a year before the accident happened. Global completed one charter trip for the Bus Bank, and was used by the Bus Bank for transportation in the Louisiana area following Hurricane Katrina. The Bus Bank was the vender used by FEMA in the Louisiana Hurricane Katrina evacuation.

There is no required registration or operating authority approval required by the FMCSA for the Bus Bank, or any other bus broker company to operate. The FMCSRs require that property-forwarding brokers and household goods register and have operating authority with the FMCSA.

5.2 HURRICANE RITA EVACUATION PROGRAM

The Texas Building and Procurement Commission (Commission) coordinated the Hurricane Rita Evacuation Program. According to the Director, the Commission contracted with about 25 to 30 bus companies to provide buses for the evacuation process. The buses contracted were required to be members of the Texas Motorcoach Association, United Motorcoach Association, or the American Bus Association. The Commisioner selected these organizations because he believed they would represent reputable carriers. The buses were strategically staged in three locations under the control of a Captain from the Texas Department of Public Safety.

The Commission would receive a request for evacuation from government and private entities, and buses would be dispatched from one of the three staging locations. Specialty vehicles were available to accommodate disabled and special needs passengers. Neither the Sun Rise Living Center nor the Bus Bank contacted the commission about this move. The Commission did not list Global as an authorized carrier for use in the evacuation. (Global was not a member of the listed professional organizations.)

The Federal Emergency Management Administration (FEMA) was not involved in the pre-hurricane evacuation.

6. Declaration of Emergency

6.1 DESCRIPTION & TYPE

The FMCSR provides relief from the regulations Parts 390 through 399 to any motor carrier or driver operating a commercial motor vehicle to provide relief during an emergency. This does not exempt the motor carrier or driver from driver license requirements, drug and alcohol testing, operational authority, or hazardous materials regulations other than those described in 49 CFR Part 397. According to the FMCSA *Guidance and Interpretations* a driver is not required to keep a log of on-duty or driving time while assisting in the emergency. The driver is required to provide the total hours worked in direct assistance to the emergency, so the driver and motor carrier can determine the amount of off-duty time the driver must have before returning to work.

The President of the United States, Governor of a State, or the FMCSA Field Administrator must declare a “Regional Emergency” for the exemption to be in order. The exemption remains in effect until the motor carrier or driver ceases assistance in the emergency operation, or 30 days after the declaration, whichever occurs first. The FMCSA Field Administrator can extend the Regional Emergency time period for 30 days and can place any additional restrictions on the motor carrier or driver.

A “Local Emergency” can be declared by a Federal, State or local government official having the authority to declare an emergency, or the FMCSA Field Administrator for the exemption to be in order. The exemption remains in effect until the motor carrier or driver ceases assistance in the emergency operation, or 5 days after the declaration, whichever occurs first. The duration of the exemption cannot be extended.

6.2 TEXAS DECLARATION OF EMERGENCY

On September 20, 2005 the Governor of Texas issued a proclamation stating that the approach of Hurricane Rita posed the threat of disaster along the Texas coast. On September 23, 2005 the Texas Governor issued a waiver for motor carriers involved in the disaster relief effort. The waiver suspended overweight and oversize permitting requirements except on bridges. The Texas DPS was to suspend all size and weight enforcement. Motor carrier registration, IFTA⁷¹ and trip permits were also suspended⁷².

Hours of Service regulations were suspended for carriers directly involved in the evacuation and recovery efforts. Carriers directly involved in the evacuation or recovery that were caught in evacuation traffic were also excused from hours of service provisions.

⁷¹ IFTA – International Fuel Tax Association

⁷² See Attachment #27: Texas Governor Proclamation/

6.3 FMCSA DECLARATION OF EMERGENCY

The FMCSA Field Administrator for the Southern US issued relief from the regulations Parts 390 through 399 in response to the Declaration of Emergency issued by the Governor of the State of Texas. On October 31, 2005 the FMCSA extended the relief from regulations⁷³ until November 19, 2005.

6.4 EMERGENCY HAZARDOUS MATERIALS EXEPMTIONS

On September 23, 2005 the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued an exemption⁷⁴ relieving persons conducting operations in relation to Hurricane Rita from the hazardous materials Regulations parts 106, 107, and 171 through 180.

7. **Vehicle Information**

7.1 REGISTRATION INFORMATION

The accident motorcoach was titled (registered) in British Columbia, Canada to Robert and Joanne McMynn. The motorcoach was last registered in the United States in Oklahoma by a previous lessee, Royal Tours in the name of Robert and Joanne McMynn the owners of R & J McMynn Leasing (McMynn). That registration expired April 20, 2004. The motorcoach is not registered in the United States at this time.

MCT Tours and Charters, Inc (MCT) of Beltsville, MD currently leased the accident motorcoach from McMynn (MCT Tours and Charter, Inc.) They leased a total of four buses from McMynn; two buses prior to this lease and two buses leased by this transaction. According to McMynn the lessee is required to register the buses in the State that the company registers or operates in. McMynn provided Title information similar to a Power of Attorney document to MCT for the purposes of registration on May 26, 2005.

According to the United States Customs Service, "Entry Summary", the accident bus entered the United States through Buffalo, New York on May 28, 2005. It identified the broker as Norman G. Jensen, Inc. of, Tonawanda, New York. It was processed on June 2, 2005.

McMynn's leases require that the lessee is responsible for the vehicle. The lessee is responsible for all repairs and maintenance. The lease requires specific maintenance at specific mileage intervals. The lease also prohibits the sub-lease of a McMynn vehicle without their authorization. According to McMynn they were surprised that the accident

⁷³ See Attachment #28: FMCSA Regional Emergency Declaration

⁷⁴ See Attachment #29: PHMSA Exemption

motorcoach was operated by Global, because of the lease to MCT and no authorization to sub-lease was granted⁷⁵.

Global operated the motorcoach on a Texas 144-hour temporary registration permit for the trip and operation in Louisiana. During the time the motorcoach operated in Louisiana the permit expired. According to the driver he removed a tag (license plate) from another Global bus operating in Louisiana and attached it to the fire motorcoach. He did this because he didn't want to get stopped for expired registration.

7.2 OPERATIONAL HISTORY

The operational history of the bus was obtained from McMynn:

1. McMynn accepted delivery from MCI
April 1998
2. AZ Bus Company
Toronto Canada
July 1998 through 92,000
3. Q Bus Company
Quebec, Canada
August 2000 through October 2000
4. Royal Tours
Atlanta, Georgia
December 2000 through June 2004
5. MCT Tours and Charters, Inc (sub-lease to Global)
Beltsville, MD
May 2005 to date

END OF REPORT

⁷⁵ See Attachment #30: McMynn Leasing Information